

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel.  
THOMAS J. MILLER, 99AG25112  
ATTORNEY GENERAL OF IOWA

Plaintiff,

v.

MARK D. SCHNEIDEWIND AND  
NATIONWIDE CONSTRUCTION, INC.,

Defendants.

EQUITY NO. CE CE 71291

CONSENT JUDGMENT

FILED  
POLK COUNTY, IA.  
12 APR 11 PM 1:23  
CLERK DISTRICT COURT

This Court, recognizing that the State of Iowa, by Attorney General Thomas J. Miller and Assistant Attorney General Benjamin E. Bellus, and Mark D. Schneidewind and Nationwide Construction, Inc., represented by Michael J. Miller, have consented to the entry of this judgment, finds as follows:

1. The Court has jurisdiction over the parties and the subject matter of this litigation.
2. Venue is proper in Polk County, Iowa.
3. Plaintiff is the State of Iowa, ex rel. Attorney General Thomas J. Miller, the duly elected Attorney General of Iowa. The Attorney General of Iowa is expressly authorized pursuant to Iowa Code §§ 714.16(7) and 555A.6(2) to file a civil action against any person who has engaged in a practice declared to be unlawful under Iowa Code § 714.16 and/or Iowa Code chapter 555A.
4. Defendant Mark Schneidewind is an owner, president, operator, managing agent and registered agent of a home repair and contractor business incorporated in Nebraska under the name of "NationWide Construction, Inc." Defendant Schneidewind does business in several states, including Nebraska and Iowa. At the times relevant to this action, his primary business offices were located in Omaha, Nebraska at 242 North 114<sup>th</sup> Street, 1616 N. 203 Street, 561 S.

126<sup>th</sup> Street, 1618 N. 203 Street and 1620 N. 203 Street. Defendant Schneidewind is named in his individual capacity as well as his past or present corporate capacities.

5. Defendant Schneidewind formulated, directed, controlled, was a primary participant in, and had, or should have had, knowledge of the acts and practices of NationWide Construction, Inc., constituting the violations of Iowa law as alleged herein and, at all times relevant hereto, was an owner, officer, director, and/or agent of NationWide Construction, Inc.

6. Defendant NationWide Construction, Inc. ("NationWide") is a home repair and contractor business incorporated in Nebraska which does business in both Nebraska and Iowa. At all times relevant to this action, the primary business offices of NationWide were located in Omaha, Nebraska at 242 North 114<sup>th</sup> Street, 1616 N. 203 Street and 561 S. 126<sup>th</sup> Street.

7. The phrase "home repairs or contractor services," as used herein, includes any work on any residential dwelling or other structure; and any work on other things commonly found on residential real property including, but not limited to, garages, basements, interiors, roofs, porches, driveways, sidewalks, patios and fences.

8. Unless otherwise specified, the term "Defendants" as referred to herein includes Mark D. Schneidewind and Nationwide Construction, Inc.; as well as any corporate name or trade name under which they operated, or are operating, a business; and their representatives, agents, independent contractors, assigns, successors, or other business entities, whose acts, practices or policies are or were directed, formulated or controlled by Mark D. Schneidewind and Nationwide Construction, Inc.

9. The State alleges that Defendants violated Iowa Code Chapter 555A in a manner including, but not limited to, selling home repairs or contractor services at a place other than the Defendants' place of business and:

- a. failing to disclose the consumers' right to cancel in 10 point boldface type on the front of the contract or receipt, as required by Iowa Code § 555A.2;
- b. failing to provide the consumer with a "Notice of Cancellation" drafted in the required form and content required by Iowa Code § 555A.3;
- c. failing to furnish to the consumer two copies of the notice of cancellation which included the date by which the consumers must give the notice of cancellation to the Defendants, as required by Iowa Code § 555A.4(1); and
- d. failing to honor a valid notice of cancellation by consumers and within ten business days after the receipt of notice refund all payments made under the contract or sale. Iowa Code § 555A.4(5).

10. The State further alleges that Defendants violated Iowa Code § 714.16(2)(a) by:

- a. pursuant to Iowa Code § 555A.6(2), committing the violations of Iowa Code Chapter 555A referenced in paragraph 9, above;
- b. representing to consumers that Defendants would begin home repairs or contractor services within a promised time period, without a reasonable basis for such representations;
- c. representing to consumers that Defendants would complete home repairs or contractor services within a promised time period, without a reasonable basis for such representations;
- d. representing to consumers that Defendants would complete home repair or contractor services in a specific manner and then failing to provide said services to the agreed specifications;
- e. representing to consumers that Defendants were members in good standing with the Better Business Bureau when in fact neither Defendant was a member of the BBB, and in fact, Defendant NationWide had an "F" rating with 42 consumer complaints;
- f. representing to consumers that Defendants could provide home repair or contractor services in Iowa when Defendants were legally prohibited from providing such services because they were not properly registered with the Iowa Department of Workforce Development;
- g. representing to consumers that Defendants could provide home repair or contractor services in Iowa when Defendants were prohibited from providing such services pursuant to a court order;
- h. contracting with consumers to provide home repair and contractor services, and then failing to provide labor, materials or reimbursement of the consumers' down payment;

i. accepting payment as a down payment for the provision of home repair and contractor services and then failing to provide labor or materials, and then failing to reimburse consumers for their down payment; and

j. refusing to respond to consumer inquiries, or responding to consumer inquiries in a manner that delayed, or otherwise prevented, consumers from limiting their loss.

11. The State further alleges that Defendants intentionally violated the *Order Granting State's Application For Order Enforcing Attorney General Subpoena*<sup>1</sup> in a manner including, but not limited to, failing to comply with the State's investigative subpoena and yet:

a. selling, promoting or advertising for sale any merchandise or services in the State of Iowa; and

b. collecting or accepting payments for home repairs or contractor services from individual Iowans or Iowa businesses.

12. Defendants deny the State's allegations but agree to entry of this Consent Judgment.

13. Defendants waive their right to a judicial or administrative hearing on any issue of fact or law set forth in the petition filed by plaintiff herein.

14. It is in the public interest that permanent injunctive relief be issued herein to protect the people of the State of Iowa from any further losses from any similar conduct by the Defendants in Iowa in the future.

15. The Court finds that an Order should be entered in this matter.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that, pursuant to Iowa Code § 714.16(7):

16. Defendants Mark D. Schneidewind and Nationwide Construction, Inc.; and their employees, agents, successors, assigns and all other persons acting in concert with or participating with Defendants, who have actual or constructive notice of this order, are hereby

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<sup>1</sup> *State v. Nationwide Construction, Inc. and Mark Schneidewind*, Polk County CE 67602.

permanently RESTRAINED and ENJOINED from:

- a. failing to comply with all provisions of the Iowa Door-To-Door Sales Act, Iowa Code chapter 555A (2011), and as that chapter is subsequently amended;
- b. requesting or accepting any payments for labor from any consumer until the work for which Defendants contracted with that specific consumer is fully completed;
- c. requesting or accepting advance payments for materials or other contracting expenses from any consumer for payment to Defendants until that contract is fully completed;

Alternative to direct payment: However, Defendants may request that a consumer make payment for materials or other contracting expenses directly to a supplier, or via a check supplied to Defendants which is made directly payable to only the third party supplier for the exact cost of materials or contracting expenses, so long as the Defendants have no ownership interest in the third party supplier and do not in any manner direct or control the business or sales practices of the third party supplier.

- d. unless a third party supplier is to deliver the materials, failing to deliver the materials purchased with each consumer's payment to the site where the work is to be performed within five (5) calendar days after payment by the consumer;
- e. applying any funds received from consumers to any use other than that directly attributable to their contract or project;
- f. misrepresenting to consumers the time period in which Defendants will begin home repairs or contractor services;
- g. misrepresenting to consumers the time period in which Defendants will complete home repairs or contractor services;
- h. failing to complete all contracts for home repairs or contractor services in a timely manner;

Definition of "timely manner": For purposes of this subparagraph only, there shall be a rebuttable presumption that any contract not completed within thirty (30) calendar days after a contract was signed was not completed in a timely manner and the Defendants are in violation of this Consent Judgment. If Defendants provided the consumer with a written completion date in the contract, there shall be a rebuttable presumption that any contract not completed within fifteen (15) calendar days of the written completion date contained in the contract was not completed in a timely manner and the Defendants are in violation of this Consent Judgment.

- i. failing to perform any work in connection with home repairs or contractor services in a

professional, competent and workmanlike manner including, but not limited to, complying with all applicable laws, regulations, ordinances, building codes, professional standards, manufacturer guidelines, etc.;

j. employing any manner of unfair practice, deception, fraud, false pretense, false promise, misrepresentation; or concealment, suppression or omission of a material fact in connection with the lease, sale or advertisement of any merchandise or service; including but not limited to, representing that Defendants have any affiliation, association, registration, certification, licensing, training or other qualification(s) when Defendants do not possess those associations or qualifications; and

k. failing to respond to a consumer complaint, or an inquiry from the Attorney General's office or any other governmental entity, in a prompt, timely, truthful and informative manner when requested to do so in connection with a consumer complaint or inquiry.

Definition of "prompt and timely": For purposes of this subparagraph only, a response will be deemed "prompt and timely" if the consumer, Attorney General or other governmental entity receives the Defendants' written response within ten (10) days from the date on which the Defendants received the complaint, either by telephone, U.S. mail or any other generally used medium.

17. At the time that this Consent Judgment is entered by the Court, the injunctive provisions contained in paragraph 16 of this Consent Judgment shall supersede the injunctive provisions contained in the *Order Granting State's Application For Order Enforcing Attorney General Subpoena* filed on June 14, 2011; all other provisions of that *Order* shall remain in full force and effect.

18. The following shall apply should the Court find that Defendants Mark D. Schneidewind or Defendant Nationwide Construction, Inc. violated this Consent Judgment:

a. Defendants shall be permanently restrained and enjoined from owning, operating, controlling, directing, or otherwise profiting from any business in the State of Iowa that in any manner offers or provides home repairs or contractor services;

b. Defendants shall also be ordered not to advertise or offer any home repairs or contractor services to Iowa consumers nor enter into any contracts to provide home repairs or contractor services to Iowa consumers;

c. Defendants shall be ordered not to advise, control, direct, or otherwise exercise any authority to any extent regarding a business which, in part or in whole,

provides home repairs or contractor services, including, but not limited to business practices, hiring decisions, or the like; and

d. Defendants may also be found guilty of contempt of this Court, pursuant to Iowa Code Chapter 665 (2011), and as that chapter is subsequently amended.

The Order under this paragraph shall be in addition to other remedies the Court may Order in the event of Defendants' non-compliance with this Consent Judgment.

19. Pursuant to Iowa Code § 714.16(7), the Court may impose a civil penalty of not more than \$5,000 for each day of intentional violation of this Consent Judgment in addition to any other remedy allowed by law.

20. Pursuant to Iowa Code § 714.16(7), judgment in the amount of \$7,179.87 is hereby entered jointly and severally against Defendants for reimbursement of Norman S. Blackburn.

Said reimbursement shall be provided in the following manner:

a. All payments shall be delivered to:

Susan Kerr, Investigator, (or the successor to her position)  
Iowa Department of Justice  
Consumer Protection Division  
1305 East Walnut Street, Second Floor  
Des Moines, IA 50319

b. Defendants shall make payments of \$2,000.00 per month, beginning on APRIL 1, 2012, and continue to pay said installment on or before the third day of each consecutive month until the full restitution amount has been paid. The State may claim interest at the rate of 10% per annum on any payments not received by the Consumer Protection Division by the eighth (10th) day of the month in which that payment is due. The provisions of this Consent Judgment do not preclude Defendants from paying restitution in advance of this payment schedule if Defendants so choose.

21. This Consent Judgment shall not bar the State or any other governmental entity from

enforcing other laws or rules against Defendants relating to any of Defendants' practices, including those alleged in the petition.


22. This Consent Judgment shall not be construed so as to affect the legal or equitable rights of any individual citizen to initiate court proceedings against Defendants and to obtain any relief authorized by law or regulation.

23. Pursuant to Iowa Code § 714.16(11), Defendants shall pay any and all court costs incurred in this action.

24. The Court reserves jurisdiction over this action in order to take any further action deemed necessary to enforce this judgment and to award the State judgment for any costs, including attorneys fees, it incurs in the event of noncompliance by Defendants. Such costs may include court costs in excess of those authorized by paragraph 23, above.

25. The mailing of a copy of this signed and filed Consent Judgment to counsel for the Defendants shall constitute notice and acceptance by Defendants of all the terms of this Consent Judgment; Defendants have waived the necessity of having the Consent Judgment served upon them.

IT IS SO ORDERED this 16<sup>th</sup> day of April, 2012.

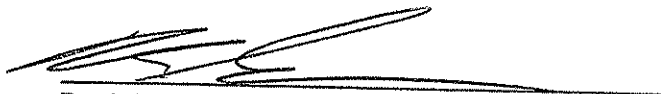
  
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JUDGE, FIFTH JUDICIAL DISTRICT OF IOWA

Agreed and approved as to form and content:

Date 3-6-2012

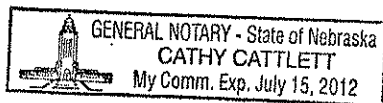
Nationwide Construction, Inc.  
Defendant

By affixing a signature to this Consent Judgment, the individual signing on behalf of Nationwide Construction, Inc., Mark D. Schneidewind hereby represents that he has legal authority to bind the Corporate Defendant to the terms and provisions of this Consent Judgment.



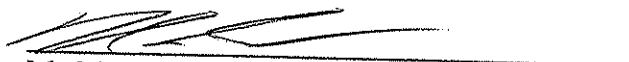
By: Mark D. Schneidewind  
Title: President and Owner

Subscribed and sworn to before me this 6 day of MARCH, 2012



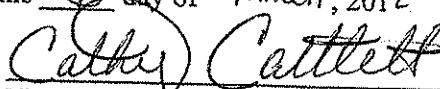
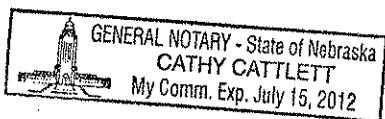
Notary Public in and for the State of Nebraska

Date 3-6-12



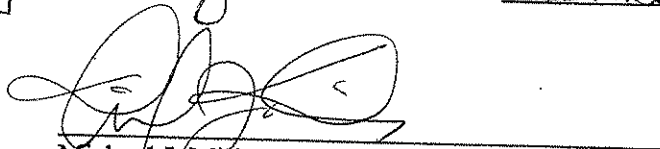
Mark D. Schneidewind, Individually  
Defendant

Subscribed and sworn to before me this 6 day of MARCH, 2012



Notary Public in and for the State of NEBRASKA

Date 3-16-12



Michael J. Miller  
Attorney for the Defendants

Date 3-23-12



Benjamin E. Bellus  
Attorney for the State of Iowa  
Consumer Protection Division

Copies to:

Michael J. Miller  
PATTERSON LAW FIRM, LLP  
505 5th Ave., Ste. 729  
Des Moines, Iowa 50309

Benjamin E. Bellus  
IOWA DEPARTMENT OF JUSTICE  
1305 East Walnut, Second Floor  
Des Moines, IA 50319